



Rules and Ancillary Document Review Checklist
(This form must be filled out electronically.)

All responses should be in **bold** format.

Documents Reviewed (include titles):

- **WAC 458-20-242A (Pollution control exemption and/or credits for single purpose facilities added to existing production plants to meet pollution control requirements and which are separately identifiable equipment principally for pollution control); and**
- **WAC 458-20-242B (Pollution control exemption and/or credits for dual purpose facilities which are constructed to meet pollution control requirements and which achieve pollution control in the process of production of the plant's products)**

Dates last adopted: **March 30, 1983 and December 8, 1977, respectively**

Reviewer: **D. Douglas Titus**

Date review completed: **September 6, 2000**

Is this document being reviewed at this time because of a taxpayer or business association request? (If "YES", provide the name of the taxpayer/business association and a brief explanation of the issues raised in the request). **YES** ☐ **NO** ☒

Type an "x" in the column that most correctly answers the question, and provide clear, concise, and complete explanations where needed.

1. Explain the goal(s) and purpose(s) of the document:

Rule 242A provides detailed instructions for determining the amount of the pollution control tax exemption and/or credit for purposes of the retail sales, business and occupation, use, and public utility taxes for single purpose facilities added to existing production plants. The rule also explains that credits claimed may be reduced by the net commercial value of materials captured or recovered by the pollution control facility, and provides information to make that determination.

Rule 242B explains the calculations and procedures to determine the tax exemption or credit from the B&O, retail sales, use, and public utility taxes for certain plant equipment which achieves pollution control in the process of production of a plant's products as distinguished from add-on pollution control equipment.

**2. Need:**

YES	NO	
X		Is the document necessary to comply with or clarify the application of the statutes that are being implemented? (E.g., does it provide detailed information not found in the statutes, reduce the need for taxpayers to search multiple rules or statutes to determine their tax-reporting responsibilities, help ensure that the tax law and/or exemptions are consistently applied, etc?)
X		Is the document obsolete to a degree that the information it provides is of so little value that the document warrants repeal or revision?
	X	Have the laws changed so that the document should be revised or repealed? (If the response is "yes" that the document should be repealed, explain and identify the statutes the rule implemented, and skip to Section 10.)
X		Is the document necessary to protect or safeguard the health, welfare (budget levels necessary to provide services to the citizens of the state of Washington), or safety of Washington's citizens? (If the response is "no", the recommendation must be to repeal the document.)

Please explain. **This rule provides detailed information on the computation of the amounts of pollution control exemptions or credits.**

No new applications for certificates of exemption or credit may be submitted after 1981, and those provisions of the Rule 242A relating to applications are obsolete and should be removed. Although the provisions of Rule 242A relating to applications are obsolete, the balance of the information is still needed

3. Related ancillary documents, court decisions, BTA decisions, and WTDs: Complete Subsection (a) only if reviewing a rule. Subsection (b) should be completed only if the subject of the review is an ancillary document. Excise Tax Advisories (ETAs), Property Tax Bulletins (PTBs) and Audit Directives (ADs) are considered ancillary documents.

(a)

YES	NO	
	X	Are there any ancillary documents that should be incorporated into this rule? (An Ancillary Document Review Supplement should be completed for each and submitted with this completed form.)
	X	Are there any ancillary documents that should be repealed because the information is currently included in this or another rule, or the information is incorrect or not needed? (An Ancillary Document Review Supplement should be completed for each and submitted with this completed form.)
	X	Are there any Board of Tax Appeal (BTA) decisions, court decisions, or Attorney Generals Opinions (AGOs) that provide information that should be incorporated into this rule?
X		Are there any administrative decisions (e.g., Appeals Division decisions (WTDs)) that provide information that should be incorporated into the rule?



(b)

YES	NO	
	NA	Should this ancillary document be incorporated into a rule?
	NA	Are there any Board of Tax Appeal (BTA) decisions, court decisions, or Attorney Generals Opinions (AGOs) that affect the information now provided in this document?
	NA	Are there any administrative decisions (e.g., Appeals Division decisions (WTDs)) that provide information that should be incorporated into the document?

If the answer is “yes” to any of the questions in (a) or (b) above, identify the pertinent document(s) and provide a brief explanation of the issue(s).

Information from the following administrative decisions should be incorporated into Rule 242A:

- **Determination No. 98-104, 18 WTD 66 (1999), held that unused pollution control tax credits for a pollution control facility are available to an assignee of the original installer when the facility is transferred, but may not be assigned separate from the facility; and**
- **Determination No. 88-268, 6 WTD 193 (1988), held that pollution control credit certificates could not be revoked by the Department of Revenue on its own initiative.**

4. Clarity and Effectiveness:

YES	NO	
X		Is the document written and organized in a clear and concise manner?
X		Are citations to other rules, laws, or other authority accurate? (If no, identify the incorrect citation below and provide the correct citation.)
X		Is the document providing the result(s) that it was originally designed to achieve?
	X	Do changes in industry business methods warrant repealing or revising this document?
	X	Do any administrative changes within the Department warrant repealing or revising this document?

Please explain. **While the provisions of the Rule 242A relating to applications are obsolete, the balance of the information in both rules is still needed.**

There is a potential for confusion in the paragraph in Rule 242A dealing with revocation of certificates because it appears to conflict with the 1988 determination noted above, which held the Department has no authority to revoke a credit or exemption certificate on its own initiative.



As a result, to update and make Rule 242A more effective it should be revised and rewritten:

- To delete references to the application process and time limits for applications as explained in Section 2;
- To include information contained in the WTDs noted above in Section 3; and
- To add information regarding the net commercial value of recovered products.

Rule 242B provides useful information and instructions for calculation of complex pollution control exemptions or credits for facilities which also are used in production.

5. Intent and Statutory Authority:

YES	NO	
X		Does the Department have sufficient authority to adopt this document? (Cite the statutory authority in the explanation below.)
X		Is the information provided in the document consistent with the statute(s) that it was designed to implement ? (If “no”, identify the specific statute and explain below. List all statutes being implemented in Subsection 9, below.)
	X	Is there a need to recommend legislative changes to the statutes being implemented by this document?

Please explain. **These rules were adopted under authority of RCW 82.34.040, which specifically authorizes the Department to adopt and publish rules to explain the provisions of the chapter 82.34 RCW.**

6. Coordination: Agencies should consult with and coordinate with other governmental entities that have similar regulatory requirements when it is likely that coordination can reduce duplication and inconsistency.

YES	NO	
	X	Could consultation and coordination with other governmental entities and/or state agencies eliminate or reduce duplication and inconsistency?

Please explain. **The Department of Revenue has the authority to administer the B&O, retail sales, and public utility taxes in this area; however, RCW 82.34.030 requires prior approval of a certificate by the Department of Ecology or operating local or regional air pollution control agencies, as appropriate, and such agencies are vested with the authority to revoke certificates.**

7. Cost: When responding, consider only the costs imposed by the document and not by the statute.

YES	NO	
	X	Have the qualitative and quantitative benefits of the document been considered in relation to its costs? (Answer “yes” only if a Cost Benefit Analysis was completed when the rule was last adopted or revised.)



Please explain. **This is an interpretive rule that imposes no new or additional administrative burdens on businesses that are not already imposed by law.**



8. Fairness: When responding, consider only the impacts imposed by the document and not by the statute.

YES	NO	
X		Does the document result in equitable treatment of those required to comply with it?
	X	Should it be modified to eliminate or minimize any disproportionate impacts on the regulated community?

Please explain. **These documents currently result in the equitable treatment of those required to comply with it.**

9. LISTING OF DOCUMENTS REVIEWED: (Use “bullets” with any lists, and include documents discussed above. Citations to statutes, ancillary documents, and similar documents should include titles. Citations to Attorneys General Opinions (AGOs) and court, Board of Tax Appeals (BTA), and Appeals Division (WTD) decisions should be followed by a brief description (i.e., a phrase or sentence) of the pertinent issue(s).)

Statute(s) Implemented: **To the extent these statutes apply to pollution control exemptions or credits for the B&O, sales, use, and public utility taxes:**

- **RCW 82.04.220 (Business and occupation tax imposed);**
- **RCW 82.08.020 (Tax imposed--Retail sales . . .);**
- **RCW 82.12.020 (Use tax imposed);**
- **RCW 82.16.020 (Public utility tax imposed . . .);**
- **RCW 82.32.160 (Provides for notice of denial of application for pollution control tax exemption and credit certificate);**
- **RCW 82.34.010 (Defines terms relating to pollution control facilities);**
- **RCW 82.34.015 (Limitations on issuance of certificates . . .);**
- **RCW 82.34.050 (Original acquisition of facility exempt from sales and use taxes—Election to take tax credit in lieu of exemption); and**
- **RCW 82.34.060 (Application for final cost determination as to . . . facility . . .);**
- **RCW 82.34.100 (Revisions of prior findings of appropriate control agency—Grounds for modification or revocation of certificate or supplement—Exemptions from revocation).**

Ancillary Documents (i.e., ETAs, PTBs, and ADs): **None**

Court Decisions:

- **Weyerhaeuser v. Department of Revenue, 106 Wash.2d 557, 723 P.2d 1141 (1986), discussed whether the pollution control credit was reduced by the amount of federal investment credit to which the taxpayer’s ESOP was entitled.**

Board of Tax Appeals Decisions (BTAs):

- **ITT Rayonier Inc. v. Department of Revenue, BTA Docket No. 34541 (1988), discussed the calculation of value of recovered products;**



- **Chevron U.S.A. v. Department of Revenue**, BTA Docket No. 80-43 (1983), discussed the circumstances under which a pollution control tax credit application is timely;
- **Westinghouse Hanford Company and Rockwell, Inc.**, BTA Docket Nos. 80-17 and 80-27 (1985), discussed the requirement of a specific requirement by an appropriate government agency to install pollution control equipment as a condition to issuance of a certificate; and
- **Weyerhaeuser Company v. Department of Revenue**, BTA Docket No. 82-64 (1984), discussed reduction of the pollution control credit by the amount of federal investment credit to which the taxpayer was entitled.

Administrative Decisions (e.g., WTDs):

- **Determination No. 98-104, 18 WTD 66 (1999)**, held that unused pollution control tax credits for a pollution control facility are available to an assignee of the original installer when the facility is transferred, but may not be assigned separate from the facility;
- **Determination No. 89-524, 8 WTD 407 (1989)**, discussed the calculation of the net commercial value of recovered products for purposes of Rule 242A;
- **Determination No. 88-268, 6 WTD 193 (1988)**, held that pollution control credit certificates could not be revoked by the Department of Revenue on its own initiative; and
- **Determination No. 88-15, 5 WTD 25 (1988)**, discusses the net commercial value of recovered products for purposes of the pollution control credit.

Attorneys General Opinions (AGOs): None

Other Documents (e.g., special notices or Tax Topic articles, statutes or regulations administered by other agencies or government entities, statutes, rules, or other documents that were reviewed but were not specifically relevant to the subject matter of the document being reviewed):

- **WAC 173-14-040 (Applications submitted to the department of revenue);**
- **WAC 173-24-090 (Installation for the purpose of pollution control);**
- **WAC 458-20-104 (Small business tax relief based on volume of business);**
- **WAC 173-24-110 (Meeting the intent and purposes of chapters 70.94 and 90.48 RCW); and**
- **WAC 173-24-125 (Revision of prior findings).**

The following regulation both refers to and is referred to by Rule 242A:

- **WAC 458-20-242B (Pollution control exemption and/or credits for dual purpose facilities which are constructed to meet pollution control requirements and which achieve pollution control in the process of production of the plant's products).**

Rule 242A refers to the following statutory materials:

- **Chapter RCW 39.84 (Industrial development revenue bonds);**
- **Chapter RCW 54.44 (providing for five-commissioner public utility districts);**



- Chapter 70.94 RCW (relating to air pollution); and
- Chapter 90.48 RCW (relating to water pollution).



10. Review Recommendation:

- ☒ Amend **WAC 458-20-242A**
- ☐ Repeal
- ☒ Leave as is **WAC 458-20-242B**
- ☐ Begin the rule-making process for possible revision. (Applies only when the Department has received a petition to revise a rule.)
- ☐ Incorporate ancillary document into a new or existing rule. (Subject of this review must be an ancillary document and not a rule.)

Explanation of recommendation: (If recommending an amendment of an existing rule, provide only a brief summary of the changes you've identified/recommended earlier in this review document.)

Rule 242A should be revised to delete all references to application procedures for pollution control exemption or credit certificates. The limited opportunities for revocation of such certificates by the Department of Revenue should be more clearly explained. In addition, certain information should be added as explained in Section 4. The remainder of the rule should be rewritten in the style currently used by the Code Reviser and the Department to make them easier to understand. Though there is no need to revise the information in Rule 242B, the Department may want to consider rewriting the rule into the current style in conjunction with any revision of Rule 242A.

11. Manager action: Date: _____

- ☐ Reviewed recommendation ☐ Accepted recommendation
- ☐ Returned for further action

Comments: